

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

April 14, 2017

Alan Berger
Law Offices of Alan Berger
95 South Market Street, Suite 545
San Jose, CA 95113

SUBJECT: Termination of Standardized Fine Process to Resolve Violations of BCDC Permit No. M1992.057 issued to the Heron Bay Homeowners Association (Enforcement File No. ER2014.015 and BCDC Permit No. M1992.057)

Dear Mr. Berger,

As you know, your client, Heron Bay Homeowner's Association ("HOA"), is in violation of BCDC Permit No. 1992.057 ("Permit"), which was issued on September 4, 1994. Special Condition II.F.3.c (Public Access Improvements) of the Permit requires on Bayfront Drive, "a minimum of an 8-foot-wide paved path, with a minimum total of 4 feet of shoulder" and Special Condition II.F.2 (Permanent Guarantee) of the Permit requires this area to be permanently guaranteed to the public within 60 days of issuance of the Permit; neither of these Permit requirements has been satisfied. Therefore, the HOA has two Permit violations.

Commission enforcement staff has attempted to work with you over the past three years to resolve these violations. After two years of trying to amicably resolve these violations with no success, on May 26, 2016, staff sent you a letter commencing the standardized fine process, provided by Section 11386 of the Commission's regulations as a way to resolve violations. You were given two options to resolve the violations, which were to either obtain authorization for the as-built public access on Bayfront Drive, which is not consistent with the Permit's requirements, and provide a new public benefit to offset the absence of the required public access, or reconstruct Bayfront Drive to be consistent with the public access required by the Permit. In the first scenario, you were required to submit and obtain a permit amendment to update the public access requirements. In both scenarios, you were required to submit and gain staff approval of a legal instrument to guarantee the public access areas as originally required or as modified.

In response on July 13, 2016, you submitted an incomplete application to amend the Permit, requesting permission to retain the as-built public access and to install bicycle sharrows and public access parking spaces along Bayfront Drive, but only if BCDC authorized the HOA to install a security kiosk adjacent to the Leelling Street traffic circle. Staff responded that it could not file the application for this proposal as complete unless and until the HOA received discretionary approval from the City of San Leandro.

Heron Bay Homeowners Association
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On December 19, 2016, San Leandro City Council voted to deny the HOA's kiosk proposal. On December 21, 2016, staff informed you by email that because the City did not approve the kiosk, your incomplete amendment application could not be filed as complete and would have to be revised to remove the kiosk from the proposal or withdrawn. You acknowledged receipt of the email however staff has received no further response.

On behalf of Larry Goldzband, Executive Director of the Commission, I am now writing to inform you that he is terminating your opportunity to resolve the penalty portion of this enforcement matter using the standardized fine process. Pursuant to Section 11386(h) of the Commission's regulations, this opportunity will be effectively terminated 35 days from the date of this letter. Mr. Goldzband has directed staff to commence a formal enforcement proceeding on this matter pursuant to Section 11321 of the Commission's regulations, which will result in the issuance of a Violation Report and Complaint for Civil Penalties, to which you will have an opportunity to respond, and a public hearing with the Commission's Enforcement Committee. During this proceeding, it is in your client's best interest to continue to pursue resolution of its Permit violations. As such, I invite you to submit a revised amendment application and draft public access permanent guarantee immediately.

If you have any questions, please contact Maggie Weber of my enforcement staff by telephone at 415/352-3668 or by email at maggie.weber@bcdca.gov.

Sincerely,



ADRIENNE KLEIN
Chief of Enforcement

Enc. Chapter 13 of the Commission's Regulations

cc: Elmer Penaranda, Senior Planner, City of San Leandro